

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF MISSISSIPPI
3 SOUTHERN DIVISION

4 BUTCH OUSTALET, INC. PLAINTIFF

5 V. CIVIL ACTION NO: 1:08CV1487

6 RAY ANTHONY LEGGETT DEFENDANT

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9 TRANSCRIPT OF HEARING ON MOTION FOR PRELIMINARY INJUNCTION

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11 BEFORE HONORABLE LOUIS GUIROLA, JR.
12 UNITED STATES DISTRICT JUDGE

13
14 DECEMBER 22, 2008
15 GULFPORT, MISSISSIPPI

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18 COURT REPORTER:

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15 ALSO PRESENT: TRACI CASTILLE, FRANKE & SALLOUM
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1 **THE COURT:** We have one matter before the Court this
2 morning. Will the clerk please call the first case.

3 **DEPUTY CLERK:** Butch Oustalet, Inc. versus Ray
4 Anthony Leggett, cause number 1:08cv1487.

5 **THE COURT:** What says the plaintiff?

6 **MS. BOBADILLA:** Doris Bobadilla representing Butch
7 Oustalet Ford, Incorporated.

8 **THE COURT:** What says the defendant?

9 **MS. GOLDEN:** Good morning, Your Honor. La Quetta
10 Golden, attorney, representing the defendant, Ray Leggett.

11 **THE COURT:** Very well. Let me first take up a matter
12 that has been brought to my attention on behalf of the
13 defendant, Mr. Leggett, who is here answering the motion for a
14 temporary injunction. This morning Mr. Leggett's counsel, Ms.
15 Golden, I presume, you filed on behalf of Mr. Leggett a motion
16 to dismiss this matter for lack of jurisdiction. The motion
17 was filed at 9:23 this morning. Ms. Bobadilla, have you had an
18 opportunity to read the motion or to consider it?

19 **MS. BOBADILLA:** Your Honor, I have had an opportunity
20 to review the motion. However, I certainly would ask for an
21 opportunity to reply in writing within the procedures.

22 **THE COURT:** Well, of course, jurisdiction is a
23 threshold matter, and this Court either does or does not have
24 the power to consider your request for an injunction, and I am
25 going to want to hear from counsel regarding, now that Ms.

1 Golden has raised the question of jurisdiction, regarding
2 whether or not this Court has any authority to issue an
3 injunction. Were you prepared to do that?

4 **MS. BOBADILLA:** Your Honor, if I may address in my
5 arguments the issues of how we have jurisdiction. However, my
6 caution is that responding to Mr. Leggett's motion to dismiss
7 without proper addressing of all of its points would waive my
8 arguments, and honestly, as we have only had approximately
9 about an hour and change in order to prepare an opposition, it
10 would be wholly insufficient, I believe. So thus I can
11 certainly address the jurisdictional issues in my argument in
12 chief regarding the motion for injunctive relief, but I would
13 certainly ask this Court for an opportunity to brief and oppose
14 the motion to dismiss in writing.

15 **MS. GOLDEN:** To which, Your Honor, we object. We
16 believe that if we are allowed to go first to show and prove
17 the procedural elements of our motion to dismiss, then the
18 substantive portion of their injunction will be moot, if the
19 Court grants our motion to dismiss.

20 **THE COURT:** I think you are correct. If the Court
21 does not have jurisdiction, then I will not go near the merits.
22 That is a threshold question. And of course, it is up to the
23 plaintiff who has brought this petition for injunctive relief
24 to convince the Court that there is federal question
25 jurisdiction. I think that is what you have alleged in your

1 complaint, that there is a federal question here, rather than
2 diversity.

3 **MS. BOBADILLA:** Yes, Your Honor, we have, and I
4 believe that is the basis of our jurisdiction, but again,
5 obviously because of the seriousness of this matter, Your
6 Honor, I believe that I would be doing my client a disservice
7 if I did not properly address each and every aspect of the
8 defendant's motion to dismiss and do so in writing in order to
9 address all of the issues.

10 Frankly, the reason why we bring this particular motion in
11 the time frame that we do is based on Mr. Leggett's threats
12 regarding a deadline of December 22nd at 6:00 p.m. today. That
13 is the reason as to why we bring the complaint for injunctive
14 relief, the motion, in such haste, and also -- but basically
15 just received the motion to dismiss today. What we would ask
16 Your Honor, if amenable, is to be allowed to oppose the motion
17 to dismiss in writing. However, in the interim we request an
18 interim order from this Court to allow us that opportunity in
19 writing, but also order the defendant not to release this
20 information or the substance of this litigation and the tape
21 until such motion has been adequately opposed in writing before
22 this Court within the allowable time.

23 **MS. GOLDEN:** Your Honor, my client was just served
24 with this hearing two days ago. So in haste I had to work on
25 the motion to dismiss over the weekend, Saturday, Sunday, and

1 this morning in order to get it filed this morning by 9:30.
2 So, again, based upon what I have researched, if the Court
3 doesn't have jurisdiction, we can't get into the merits of her
4 injunction. Even if the Court wanted to, if the Court finds
5 that it does not have jurisdiction, in re or in personam
6 jurisdiction, we can't proceed on the substantive portion. And
7 I believe that once we present our motion to dismiss, I am
8 confident that the Court, after hearing what we have to
9 present, will dismiss their application for injunction.

10 **THE COURT:** All right. It may, however, be time
11 better spent, since we are here, to go ahead and permit the
12 plaintiff to present whatever evidence they intend to, and then
13 the Court will consider the jurisdictional question, and it may
14 be unnecessary for me to reach the merits or to make a ruling
15 on the merits if the Court does not have jurisdiction. But
16 since the plaintiff only received the motion to dismiss today,
17 and I know that you have been under time constraints as well,
18 it may be a more fair process if we go ahead and get the
19 plaintiffs', whatever evidence they intend to proceed with,
20 including a demonstration, if you will, that there is at least
21 a prima facie showing that the Court has some jurisdiction over
22 this matter, and then I will give you an opportunity to
23 properly respond in writing, and then reach a conclusion on
24 what I consider to be the threshold question here, and that is
25 whether or not the Court has the authority to issue any orders

1 whatsoever. All right?

2 **MS. BOBADILLA:** We are amenable to that. We would
3 ask, however, that the courtroom be held in seal. I believe
4 there are individuals here that are not parties to this
5 litigation, and because of the sensitivity of this issue, we
6 would ask that the courtroom be cleared of anyone who is not
7 either a party or a counsel on behalf of Butch Oustalet or Mr.
8 Leggett.

9 **MS. GOLDEN:** The person that is in the courtroom to
10 your left is Mrs. Leggett, Mr. Leggett's wife.

11 **MS. BOBADILLA:** And I believe, Your Honor, that we
12 have also a representative here.

13 **THE COURT:** Mr. Harris is here on my request.

14 **MS. BOBADILLA:** Yes, sir, understood.

15 **THE COURT:** That motion is denied. I am ever vigil
16 that these matters, whatever matters occur in court, remain
17 transparent and open to the public, and it would be under the
18 most unusual of circumstances that the Court would close those
19 doors and not allow the public to understand and to review what
20 is going on behind these doors. So that motion to seal the
21 court is denied.

22 **MS. BOBADILLA:** Thank you, Your Honor.

23 **THE COURT:** All right. If you would, please, from
24 the lectern -- do you intend to call any witnesses?

25 **MS. BOBADILLA:** Your Honor, we have two affidavits to

1 submit before you, and if I may submit those and approach.

2 **THE COURT:** You may. Have you shown them to counsel?

3 **MS. BOBADILLA:** Yes, Your Honor, I have.

4 **MS. GOLDEN:** Oh, I thought she was going to approach.

5 **THE COURT:** I think she is going to approach with the
6 affidavits.

7 **MS. GOLDEN:** Which we oppose those affidavits. They
8 were filed at the time of the application for the injunction.

9 **MS. BOBADILLA:** Your Honor, you can see that we have
10 actually had those secured and dated as of today very shortly
11 before arriving before this Court. We will certainly
12 supplement the record and request that they be considered by
13 this Court in reference to our complaint for injunctive relief.

14 **MS. GOLDEN:** We believe that those were filed
15 immediately after they reviewed our motion to dismiss. And if
16 I may, Your Honor --

17 **THE COURT:** Let me finish reading the affidavits. Go
18 ahead, Ms. Golden.

19 **MS. GOLDEN:** If I may, one of the affidavits is
20 submitted by Larry Clark. Larry Clark is the perpetrator of
21 the discrimination complaint that will be filed by Mr. Leggett.
22 He is also the person that is in the tape, in the videotape,
23 who is the main perpetrator. So we object to any credence that
24 he would have to state in any affidavit.

25 **THE COURT:** Well, to the extent that these affidavits

1 shed any light as to the allegations contained in the petition
2 for injunction, I am going to allow them to be marked and
3 admitted into the record. Again, in an effort not only to be
4 transparent but to be complete, I think that all of this
5 material should be included in the record, both of these
6 affidavits. You have them marked as D and E. I will simply
7 mark them as Plaintiff's Exhibits Number One and Two to this
8 hearing.

9 **(PLAINTIFF EXHIBITS ONE AND TWO INTRODUCED AND FILED INTO**
10 **EVIDENCE.)**

11 **MS. BOBADILLA:** Thank you, Your Honor.

12 **THE COURT:** You may proceed.

13 **MS. BOBADILLA:** Your Honor, Butch Oustalet,
14 Incorporated filed a complaint for injunctive relief. The
15 basis of the complaint for injunctive relief arises out of the
16 controversy within -- by Mr. Leggett, a current employee of
17 Butch Oustalet, Incorporated here in Gulfport, Mississippi.
18 Mr. Leggett, by counsel present before you, Ms. Golden,
19 submitted on October the 6th of 2008 a letter which indicated
20 that Mr. Leggett was subjected to a hostile work environment
21 due to racial discrimination while employed by Oustalet as a
22 salesperson. As a point of fact, Your Honor, Mr. Leggett is
23 still an employee of Butch Oustalet Ford, Incorporated here in
24 Gulfport; however, he has chosen to take medical leave and
25 indicated that he is unable to work due to stress conditions.

1 The letters that Ms. Golden submitted on behalf of Mr. Leggett
2 indicated that the subject matter of these complaints dealt
3 specifically with racial discrimination and hostile work
4 environment and noted in those letters which we have attached
5 to the complaint for injunctive relief as arising out of Title
6 VII, United States law, regarding discrimination and protection
7 of race and gender. She also specifically indicated that if a
8 demand for \$15 million was not paid for to resolve Mr.
9 Leggett's claims, then she, on behalf of Mr. Leggett, would
10 file an EEOC complaint and also release this alleged videotape
11 to the media.

12 In response to her demands on behalf of Mr. Leggett,
13 counsel, local counsel, Mr. Salloum's office, contacted Ms.
14 Golden, denied the allegations, and indicated that an
15 investigation must be conducted in order to determine whether
16 or not Mr. Leggett's claims had any foundation whatsoever. The
17 importance of the underlying claims is that Mr. Leggett's
18 notice to the employer allegedly of these claims first came in
19 the October 6, 2008 letter by his lawyer. He had never made
20 any complaints regarding any racial discrimination, hostile
21 work environment, sexual remarks, any of those things, while he
22 was employed or continued to appear at work with Butch
23 Oustalet, Incorporated. It wasn't until he retained a lawyer
24 and then levied a \$15 million demand, or extortionist demand,
25 against Butch Oustalet Ford to resolve these claims.

1 **MS. GOLDEN:** Objection to the word "extortionist,"
2 Your Honor.

3 **MS. BOBADILLA:** Thereafter --

4 **MS. GOLDEN:** I have an objection to the word
5 "extortionist." The demand letter was sent as customary to all
6 cases. A demand letter is always appropriate to be sent prior
7 to filing any type of action to see if the parties can resolve
8 it. That has always been the procedure that my office has
9 followed. I don't rush to court. That is not one of the
10 things that I do. So I object, emphatically object, to the use
11 of the term "extortionist."

12 **THE COURT:** All right. As a matter of courtesy --

13 **MS. BOBADILLA:** Yes, Your Honor. I will contain my
14 remarks.

15 **THE COURT:** Let us attempt to use a word -- I am
16 aware of the allegations in the petition, and I have no opinion
17 one way or the other about whether the alleged conduct
18 constitutes extortion or not, but as a matter of courtesy,
19 courtesy to Ms. Golden, I think we can find another word to
20 use.

21 **MS. BOBADILLA:** Yes, Your Honor. Thereafter, as
22 noted by Mr. Oustalet's affidavit, he, on behalf of the
23 dealership, conducted an investigation, as it was his first
24 notice on October the 6th alleging these allegations. From his
25 review and from his investigation of his employees, he did not

1 find that Mr. Leggett's claims of racial discrimination or
2 hostile work environment were well founded. Thus, on
3 December 15th of 2008, Mr. Leggett, myself, and a
4 representative from the employer, Mr. Tommy Whitman, met in a
5 conference in order to respond to Mr. Leggett's complaints and
6 to find how a resolution might be made. In that conference Ms.
7 Golden, on behalf of Mr. Leggett, indicated that if by
8 December 15th, 2008, a resolution to the claims was not made,
9 that thereafter the demand would rise to \$177 million.
10 Thereafter, on behalf of Butch Oustalet Ford, noting the
11 enormous amount of the demand and their investigation
12 indicating that these claims were unfounded, we requested an
13 extension of time in order to respond more fully to her
14 demands. That extension was granted until December 19, 2008,
15 thereby indicating that if a payment or response was not made
16 to these claims by today, December 22, 2008, by 6:00 p.m., then
17 this alleged racially charged videotape would be released to
18 the media, including CNN, Barbara Walters, et cetera.

19 Now, that is why, Your Honor, we have brought forth a
20 complaint for injunctive relief, specifically requesting that
21 the harm that we perceive would be made against Butch Oustalet,
22 Incorporated, that Mr. Leggett be restrained from releasing
23 this videotape and the substance of this litigation or
24 anticipated litigation into the media. Now, in so doing, Your
25 Honor, we understand that our burden is to satisfy whether or

1 not, under the factors for injunctive relief, whether or not we
2 would potentially be successful on the merits of this claim.

3 Of importance and supported by the affidavits of Mr. Larry
4 Clark and Butch Oustalet, this alleged videotape was made well
5 over 20 years ago. Mr. Leggett is a long-time Butch Oustalet
6 employee who in fact saw this videotape some 20 some odd years
7 ago, never filed a complaint then, never made any issue
8 regarding alleged racial discrimination or otherwise. It was
9 not again until October 6, 2008 that he submits that on
10 July 25, 2008, someone placed this videotape on his desk. One,
11 Your Honor, we would submit, in response to an EEOC complaint,
12 which the employee must and should submit in order to exhaust
13 all administrative remedies prior to bringing judicial action,
14 that his complaints of alleged racial discrimination would be
15 time-barred because that videotape that he rests this case on
16 is well over 20 years ago, and he has seen it that long ago.
17 Thus, he would not be within the 180 days that he must file his
18 complaint within.

19 Now, if in fact this Court indicates that the alleged
20 placing of this videotape on his desk on July 25th of 2008
21 brings this as some sort of continuing violation, then we would
22 submit that the act of placing the videotape which he has
23 already seen would not constitute a violation under the hostile
24 work environment and under Title VII. Thus, again, it would
25 not bring -- his claims would not be brought forth and rise to

1 the level of a continuing violation wherein he can circumvent
2 the statute in which he must file his EEOC complaint.

3 There is substantial -- there is a substantial threat that
4 irreparable harm would be done to this dealership if in fact
5 Mr. Leggett and Ms. Golden were allowed to dismiss or
6 disseminate this videotape throughout the media. Butch
7 Oustalet Ford is a company that has, and through the affidavit
8 of Mr. Oustalet, has taken an alleged complaint by Ms. Golden,
9 investigated it, determined that it is not well founded, and
10 should be able to respond to these allegations under the EEOC
11 and those administrative remedies. What Mr. Leggett and his
12 counsel are attempting to do is to basically go around the
13 system that has already been established for these types of
14 complaints.

15 **MS. GOLDEN:** I object to that statement. That is not
16 correct, and that is not what the letters state, and I object
17 to that.

18 **MS. BOBADILLA:** Your Honor, I don't believe that
19 anything I have said is -- and I have tried to curtail my
20 remarks, so I believe that she has an opportunity to respond.

21 **THE COURT:** Ladies, that is not -- it won't be
22 helpful. I am going to let you, Ms. Golden, respond,
23 obviously, to these arguments. I am still concerned as to why
24 this is before this Court, and I am still waiting to hear where
25 the jurisdiction lies. So let's go ahead and proceed, make a

1 complete record, and Ms. Golden, you know that I will give you
2 a full opportunity to respond.

3 **MS. BOBADILLA:** So, Your Honor, obviously, in
4 reference, just going back to the elements of injunctive
5 relief, the harm to the plaintiff will be substantially
6 outweighed if in fact this videotape is allowed to be
7 disseminated. If Mr. Leggett is allowed to go through the EEOC
8 process, there is no harm that comes to him aside from
9 exercising the rights that the government has set up for him.
10 And also, granting the injunction will not disserve the public
11 interest in any way. We are specifically talking about a
12 private matter between an employer and employee based on Title
13 VII claims; however, it does not involve the public interest in
14 any way. Thus, Your Honor, under the elements of injunctive
15 relief, I believe that we have met those requirements.

16 Addressing more fully the jurisdictional issues, the basis
17 of the complaints within which Mr. Leggett has brought these
18 claims deals specifically with alleged Title VII violations
19 which are federal -- which are protected by the federal law.
20 Thus, because of the federal jurisdiction claims that he brings
21 forth, this controversy between the employer and the employee
22 are based in federal question jurisdiction. What the defendant
23 would like to do is to not avail himself of the jurisdiction of
24 the EEOC and the Federal Courts but rather try this case in the
25 media before it actually gets to the venue where it should be,

1 and thus what we have asked before this Court is to enjoin them
2 from doing that. In fact, she has made a judicial admission
3 that this is the subject, this claim is the subject of the
4 EEOC. It is also Title VII claims. Thus, based on the letter
5 submitted in our complaint for injunction, based on the
6 affidavits that indicate that this controversy deals
7 specifically with federal question jurisdiction, then, Your
8 Honor, we submit the jurisdiction is proper here before this
9 Court and that the plaintiff is entitled for injunctive relief.
10 If in fact the Court submits regarding other procedural issues,
11 we would request, as we have done earlier before argument, to
12 submit in writing our opposition and/or amendment to the
13 complaint prior to it being dismissed based on these issues or
14 based on the allegations or complaints against the actual
15 jurisdictional requirements. We submit that we have already
16 met those, but to the extent that this Court feels that
17 procedural deficiencies are present, we ask for leave to amend
18 our complaint.

19 **THE COURT:** Well, it is my understanding that the
20 Court has jurisdiction of a civil rights complaint under Title
21 VII only because the EEOC has passed upon it and has given the
22 plaintiff an opportunity to file a complaint, and that gives
23 them the cause of action. But that has not occurred here yet.
24 Mr. Leggett has not brought a claim before the EEOC. There is
25 no determination by the EEOC. There is no right to sue letter.

1 There is nothing here other than the possibility or the threat
2 that Mr. Leggett may bring a claim which he may do. Why does
3 that -- under what circumstances would that now create a
4 question, a federal question which gives this Court
5 jurisdiction to do anything?

6 **MS. BOBADILLA:** Your Honor, we submit that Mr.
7 Leggett has made a judicial admission that that is in fact --
8 that is in fact the avenue in which he should follow. It is a
9 Title VII matter. It is also a matter that should be brought
10 forth before the EEOC. Mr. Leggett should be following those
11 regulations. And to come in and, one, not file before the
12 EEOC, and then indicate that he should be shielded from federal
13 jurisdiction because he will not file his EEOC, I think goes to
14 basically disserve this plaintiff, because if, in fact, he
15 should file an EEOC complaint and there we could actually
16 defend these claims within the EEOC jurisdiction and
17 parameters, then that would be one avenue, but he has failed to
18 do that. So to not allow us to come in and to litigate these
19 claims, which are, as judicially admitted by Mr. Leggett, Title
20 VII claims and in fact subject of federal question
21 jurisdiction, then it basically is a circular argument wherein
22 they will not file their complaint but then say we should not
23 be before this Court dealing with Title VII issues. So thus,
24 Your Honor, we submit that we should be here because this is
25 what the controversy, the Title VII and the federal question,

1 that is what the controversy entails. It is based on federal
2 question. This controversy between the employer and the
3 employee deals specifically with federal question, deals
4 specifically with Title VII.

5 **THE COURT:** Perhaps the underlying claim, but what is
6 before this Court is your effort to prevent the dissemination
7 of an embarrassing tape.

8 **MS. BOBADILLA:** Which arises out of alleged Title VII
9 violations.

10 **THE COURT:** All right. Anything else?

11 **MS. BOBADILLA:** Thank you, Your Honor.

12 **THE COURT:** Thank you. Ms. Golden?

13 **MS. GOLDEN:** May it please the Court. Good morning,
14 Your Honor.

15 **THE COURT:** Good morning.

16 **MS. GOLDEN:** I would like to first, if I may, address
17 and defend the attempts to amicably resolve a judicial claim
18 that my client has against his employer.

19 My client came to my office in September of 2008 with a
20 videotape in his hand. He stated that that tape was placed on
21 his desk on or about July 25, 2008. When we watched the tape,
22 that tape showed very despicable statements, racial epithets,
23 sexual innuendoes that is far worse than the tapes in the
24 Texaco case. If Your Honor can recall, in the Texaco case the
25 tapes referred to African-Americans as black jellybeans, used

1 racial epithets against African-Americans, and it also
2 disparaged the Hanukkah and Kwanzaa holidays. The reason why
3 Mr. Leggett placed the amount of demand in the demand letter,
4 and we both agreed, because we researched, and I researched,
5 the plaintiff -- I did research, and there was a plaintiff in
6 the Morgan Stanley case. The plaintiff's name is Allison
7 Sheflin. That plaintiff was awarded \$12 million in her claim
8 against her employer, and it was the highest -- it was the
9 largest any individual has ever received in a discrimination
10 settlement. So we looked at that case to make a determination
11 as to what amount we should ask for for Mr. Leggett. We didn't
12 just pull that figure from the sky. Secondly, we went to and
13 researched the Texaco case. If you can recall, Texaco was a
14 class action case, and it settled for \$176 million in a class
15 action. So Mr. Leggett and I discussed the possibility that if
16 they did not want to resolve this case, we would open the
17 case -- when we filed the lawsuit we would seek class
18 certification and open the case up to class action status, and
19 that is where the \$177 million was derived. So I take offense
20 to anyone who is stating that we are trying to extort money.

21 We think the tape is of public interest. I find it
22 amazing that counsel opposite did not offer the tape to Your
23 Honor to review in camera proceeding. In my opinion, it would
24 be very difficult for the Court to even rule on the substantive
25 nature of the tape without perusing the tape.

1 **THE COURT:** Well, I take you at your word that it is
2 as you have described it and as you have represented it. I
3 take you at your word.

4 **MS. GOLDEN:** And it is my practice, Your Honor, in my
5 20 something years of practice, I have always submitted a
6 demand, a letter of demand. That is what I do. I am an
7 attorney. I send a demand to see if we can amicably resolve
8 the issues. I have my investigation, I have my set of facts.
9 If the case cannot be resolved, then I proceed to court. And
10 in my letters that I submitted, I emphatically told them, if
11 the case cannot be resolved, my client will file an EEOC and he
12 will proceed to court. Now, if my client did not have a
13 justiciable claim, then I could see a concern for anybody
14 requesting money if they don't have legal remedy in court, but
15 I have just presented you two federal cases where the
16 plaintiffs received millions for the alleged discrimination
17 that occurred in their complaint.

18 Mr. Anthony Leggett is a victim. He is not the
19 perpetrator. And before I get into the substantive, I want to
20 argue my jurisdictional, my motion to dismiss, if I may.

21 **MS. BOBADILLA:** Your Honor, if I may, I object to the
22 argument of the motion to dismiss based on your earlier ruling
23 allowing us to oppose it in writing and thereafter, if this
24 Court chooses, setting it for hearing.

25 **THE COURT:** I will allow Ms. Golden an opportunity to

1 argue her motion.

2 **MS. GOLDEN:** Thank you. Your Honor, we believe that
3 Butch Oustalet does not have a federal question before the
4 Court. In order for any litigants to bring a matter into
5 Federal Court, there must be an issue of a violation of either
6 a Federal Constitution, United States Constitution, or a
7 treaty, or a federal common law, or some type of federal
8 statute that will allow them an avenue to have standing and
9 jurisdiction, the Court have jurisdiction. In this particular
10 case the plaintiff filed what we call, what they labeled a
11 complaint for injunctive relief. And in that complaint the
12 summons was attached, but there is no such animal called a
13 complaint for injunctive relief. What this really is, this
14 legal instrument is really an application for injunctive
15 relief, or a motion for injunctive relief, but they couched it
16 in the terms of a complaint. But in the complaint they list --
17 the only statute that they list stating that jurisdiction is
18 conferred upon the Court is 28 U.S.C. 1331, which is the
19 federal question jurisdiction. Well, there is no federal
20 question presented in this entire document. They are not
21 saying that Mr. Leggett has committed any type of federal
22 statute violation or federal law violation or a treaty
23 violation against Mr. Oustalet. That is not stated anywhere in
24 here. They have relied heavily on 42 U.S.C. 2000e Title VII
25 statutes as to their premise and why this Court should have

1 jurisdiction. However, Mr. Leggett, that case, the future case
2 of Leggett versus Oustalet, a Title VII claim, has not yet
3 occurred and will not occur until 2009 because Mr. Leggett has
4 to still file his EEOC charge of discrimination. And we, based
5 upon our count, he has until January of 2009 before his 180
6 days expires. So there is no Title VII case right now pending
7 before Your Honor, and that is the subject of our main reason
8 for our dismissal. There is no Title VII complaint where Butch
9 Oustalet is the plaintiff and Mr. Leggett is the defendant.
10 That does not exist. This is the only document that is before
11 the Court, and they are trying to get an injunction based upon
12 future litigation.

13 So we submit to the Court that Federal Court does not have
14 jurisdiction over Mr. Leggett because there is nothing in these
15 pleadings that are before the Court that would give rise to a
16 federal question.

17 Secondly, the application itself is not supported by any
18 type of sworn statement. And this makes some bold allegations
19 in this alleged complaint, and it is not sworn to. And we
20 submit that if they are going to make bold statements, it
21 should have been sworn to by counsel opposite, which it was
22 not. Therefore, this application is asking the Court to enjoin
23 my client of his constitutional First Amendment right to go to
24 the media, but yet they have not sworn to this 13 or so page
25 document.

1 And then I also argued in my motion that they had no
2 supporting affidavits attached. When Mr. Leggett was served
3 with this document, they had no supporting affidavits to
4 support their claim. Well, I just received the opposing
5 affidavits this morning at 10:55 a.m., five minutes before the
6 time for the hearing. Now, I want to object to these
7 affidavits. I don't believe Larry Clark has any credence to
8 give any type of sworn statement. I believe he is a racist. I
9 believe he has judicial animus against --

10 **MS. BOBADILLA:** Your Honor, may I object. I was
11 instructed earlier, Your Honor, respectfully, not to engage in
12 such comments, and I respectfully request that counsel opposite
13 also --

14 **THE COURT:** I think that is a fair request, Ms.
15 Golden. We don't need to refer to anyone by any labels here
16 today.

17 **MS. GOLDEN:** Secondly, I object to these affidavits
18 because with Mr. Clark's affidavit number two, they said Mr.
19 Leggett's discrimination claims are primarily based upon the
20 videotape. That is untrue. Mr. Leggett has other evidence
21 that he will present in his EEOC charge of discrimination that
22 is other than the videotape. That is not the only evidence
23 that he has. So that is an untrue statement. Likewise, it is
24 an untrue statement in Exhibit E, or Exhibit Two, number four,
25 it also says that Mr. Leggett's discrimination claims are

1 primarily based on the videotape. That is also untrue. But
2 they want me to argue and defend a case that is not yet ripe,
3 that has not been processed through the EEOC yet. And I think
4 it is unfair to Mr. Leggett to have him to come in and to
5 defend all of this evidence when he is not yet required to do
6 so. Mr. Leggett has retained my services to file an EEOC on
7 his behalf, and I will represent to the Court that we will do
8 so prior to the expiration of his 180 days.

9 Mr. Leggett, after my review -- Your Honor knows I have
10 been doing these type of cases for a long time now, after
11 reviewing Mr. Leggett's claims, he in fact has justiciable
12 claims that he intends to take forward against Mr. Oustalet.

13 Now, another point that I want Your Honor to consider,
14 Butch Oustalet, through the Ford executives, are on this
15 videotape. The tape, if it is released, is extremely
16 embarrassing, it is, but they want the Court now to come in and
17 protect them from this embarrassing tape. And why should the
18 Court give them such protection, when they are the ones who
19 made the tape and distributed the tape? Someone distributed
20 the tape even to Mr. Leggett. So now that we are proceeding on
21 this legal course, now they want you to rush in and stop us.
22 And I have a serious problem with them coming in here with the
23 lack of jurisdictional argument. I don't believe they met that
24 threshold jurisdictional standard. And an application for an
25 injunction should be supported by affidavits that will show

1 unto this Court a clear and convincing and compelling reason
2 for the Court to even grant it. And that is getting into the
3 substantive part.

4 Also, they failed to request a bond and security, and
5 according to Federal Rule of Civil Procedure 65(c), that if --
6 before this Court can issue a preliminary injunction, security
7 must be posted, unless they are the United States Government or
8 an agency of the United States Government. And as of this date
9 they have not posted bond, nor have they requested it in their
10 document that bond be waived. So there are a lot of procedural
11 flaws in this application for injunctive relief.

12 And then, finally, they are -- I have never seen a case
13 where you file for -- you open the file, a case in court, with
14 the application for injunction. They should have filed a
15 complaint first and then predicated upon that complaint
16 simultaneous to or shortly thereafter filed an application for
17 injunctive relief, not filed a complaint for injunctive relief.
18 It muddies the water, and that is what they did. They called
19 it a complaint, but it is not a complaint. It is simply an
20 application for injunctive relief, and there is no complaint.
21 We submit to the Court there is no complaint, the complaint
22 which sets forth the allegations with specificity, showing the
23 federal statute that has been violated, and that has not
24 occurred in this case.

25 The Court should also know that the reason why Mr. Leggett

1 has not filed his EEOC as of this date, although he still has
2 time in the future, because counsel opposite, we were engaging
3 in settlement negotiations. She would say, *well, give us a*
4 *little more time, I think we can resolve this, give us a little*
5 *more time, I think we can resolve this*, and they have requested
6 three or four extensions throughout, since from October to now.
7 So when they requested, she also stated, counsel opposite,
8 *well, I think your demands -- your demands are higher than our*
9 *policy limits, I believe Lloyds of London is also looking into*
10 *seeing whether or not they are going to join in to try to meet*
11 *your demands*. So if -- and again, Your Honor, if a case can be
12 resolved confidentially and amicably without having to file a
13 lawsuit, that is what I do. That is what I do for a living.
14 Mr. Leggett has a constitutional right to go to the media. He
15 has a right to do it. It doesn't matter how embarrassing the
16 tape may be. And he still wants to go to the media because he
17 thinks the public needs to know how these Ford executives think
18 about their African-American customers. He also, in this
19 Court, when I represented Chevron -- when I represented
20 Reginald May versus Chevron, we had photographs that we
21 obtained in evidence that were at least 40 years old of Chevron
22 executives wearing Ku Klux Klan hoods over their faces with the
23 Chevron emblem on the hood. Well, it was Judge Bramlette who
24 presided over that case, and the same arguments came about as
25 to whether or not my clients, Mr. Reginald May and John Brown,

1 should go to the media here and expose the corporation for what
2 they really were. And Judge Bramlette showed that that, those
3 photos, even though they were 40 years old, could establish a
4 pattern and a practice of racial animus against my clients. So
5 this tape, although it is 20 years old, it does show and it
6 will show the racial animus that Larry Clark, Buddy Feeney have
7 against my client and other African-American employees who work
8 for the company, and for the African-American customers to
9 which they serve.

10 Now, again, getting back to this tape, I am just amazed
11 that they are asking you to restrain us from releasing this
12 tape, and they have not brought the tape forward. But, Your
13 Honor, I knew they weren't going to request for you to see the
14 tape, but I brought the tape, and I am going to request an in
15 camera proceeding. It is a 17-minute tape that will allow you
16 to look at the tape and see it, and then you will understand
17 why my client is upset and angry and disturbed over that tape.
18 I am an African-American female, and when I saw that tape I was
19 deeply offended, highly upset, over what these people have said
20 about my people, and what they have said about me, and what
21 they have said about females.

22 **MS. BOBADILLA:** Your Honor, I apologize for this
23 intrusion, but I truly believe that counsel's arguments are
24 going way beyond the scope of her motion and/or opposition.

25 **THE COURT:** I told you, Ms. Golden, I take you at

1 your word, and from the enthusiasm that both you and counsel
2 for the plaintiff have exhibited here today, I have no doubt
3 that the tape would be extremely embarrassing to one or more
4 parties, and I don't think it would -- I do not think it would
5 be helpful to this Court in trying to evaluate whether it has
6 jurisdiction or not, or whether or not an injunction should or
7 should not be granted to actually be subjected to the content
8 of that particular tape. I take you at your word that it is
9 racially insensitive and that it is a great embarrassment to
10 one or more parties. What I am concerned with here more than
11 anything else is whether or not this Court has the authority to
12 do anything, and some underlying issues as well. So let's try
13 to get on with that, and I will leave for another day, perhaps
14 to a jury or for some other judicial tribunal to determine the
15 underlying merits of Mr. Leggett's claim.

16 **MS. GOLDEN:** Now, Your Honor, also, in the Chevron
17 matter, the Chevron officials were upset as well that their
18 pictures went to the media. They were highly upset. But the
19 constitutional right of a plaintiff to take his matter to the
20 media is a fundamental right, and that is a right that Mr.
21 Leggett has.

22 **THE COURT:** Then why hasn't Mr. Leggett done that
23 already?

24 **MS. GOLDEN:** Because we were in the middle of
25 settlement negotiations. He came to me, to my office, in

1 September. Well, they kept saying, *well, let's see if we can*
2 *work it out, work it out.* It was only this week, last week, a
3 week from today, that settlement negotiations broke down, and
4 when those settlement negotiations broke down, that is when
5 they ran to the Court and filed this application for an
6 injunction.

7 **THE COURT:** Well -- all right. I will let you finish
8 your argument.

9 **MS. GOLDEN:** So with that, Your Honor, we
10 respectfully request the Court to dismiss this application for
11 injunction. We don't believe this Court has in re or in
12 personam jurisdiction, no federal question jurisdiction over
13 Mr. Leggett, and that it should be in fact dismissed.

14 And I also want to defend my client's -- the assertions,
15 the underlying assertions that have been stated here today
16 regarding my client. He has a right to try to settle any
17 matter, and he also has a right, a constitutional right, if he
18 wants to, to go to the media. If Your Honor -- I am not sure
19 if Mr. Leggett is going to go to the media, but he has a right
20 to defend this application for injunction, and we believe these
21 people are in the wrong court. Thank you.

22 **THE COURT:** Thank you, Ms. Golden.

23 **MS. BOBADILLA:** May I briefly reply, Your Honor?

24 **THE COURT:** Please be brief because I intend to move
25 quickly.

1 **MS. BOBADILLA:** Yes, sir. Your Honor, in the
2 opposition to the complaint for injunctive relief, and then the
3 motion for injunctive relief that is before you, Ms. Golden
4 specifically cited federal cases. She specifically
5 characterized those not necessarily factually and analogously
6 correct to the complaints of Mr. Leggett, but in fact cited
7 federal cases in order to establish her opposition to our
8 injunctive relief. I submit that what she has done is again
9 make a judicial admission that this is actually the appropriate
10 court. She has indicated twice during her argument that her
11 client has a judicial claim, he actually has a judicial claim.
12 What she has in fact stated and admitted is that her client has
13 a claim for Title VII claims, hostile work environment arising
14 from federal question issues. However, they have chosen not to
15 act on those claims but in fact threaten this particular
16 company with either resolving the claim prior to defending
17 itself before the EEOC or paying either \$15 million or
18 \$177 million, depending on which day it is. Thus, Your Honor,
19 what we submit is that she has actually in fact stated that her
20 client has a claim, that the controversy between the employer
21 and the employee arises out of the federal question and arises
22 out of the Constitution. In fact, she has indicated that her
23 client, though I beg to differ and believe that she is wrong,
24 has a constitutional right to do what he intends to do or has
25 threatened to do to disseminate this tape. Thus, those

1 arguments in and of themselves admit that this is the
2 appropriate court to be before.

3 Thus, Your Honor, the procedural issues again we have
4 requested to brief in writing. We have indicated that we filed
5 the motion for injunctive relief. A bond can be posted today.
6 So as to those procedural issues, those can either be, number
7 one, are not faulted to the actual complaint and/or can be
8 corrected. And we specifically indicate that through counsel's
9 arguments, which she has indicated that her client does in fact
10 have a claim, that claim is born on a federal question in Title
11 VII.

12 **THE COURT:** I am going to give you until 1:00 to
13 convince me of that, to provide this Court with some case
14 authority, some statute, or some ruling by a Court of Appeals
15 somewhere that this Court would have jurisdiction to rule on an
16 injunctive matter where no underlying claim has ever been
17 filed. You bring me something that convinces the Court that,
18 at least a prima facie showing that I have got jurisdiction,
19 and we will proceed; otherwise, I am very suspicious that this
20 Court has jurisdiction to hear this matter. I am going to give
21 you until 1:00.

22 **MS. BOBADILLA:** And, Your Honor, would you like me to
23 hand deliver it, Your Honor, submit it via fax? How would you
24 like it done?

25 **THE COURT:** If you have got a case that confers

1 jurisdiction on me, I want to see it. You can either give me
2 the citation or bring the case with you, but I am truly
3 unpersuaded that I have the authority to do anything in this
4 case in the posture in which it is in today.

5 What we have here, quite frankly, is that Mr. Leggett is
6 in possession of a tape that is potentially embarrassing to
7 your clients. Your clients do not want that tape disseminated
8 to the media. So the question here is, no matter what the
9 potential underlying claim may be, is whether I have got any
10 underlying authority to stop them from doing what you don't
11 want them to do, and that is to provide to the media, for
12 whatever value the media may find in it, a potentially
13 embarrassing tape recording. And I want to know what authority
14 I have got to intercede on behalf of the plaintiff and where
15 that authority comes from. You brought it as a federal
16 question. There must be a statute or there must be some case
17 interpreting a statute which would give me the authority to do
18 what you ask.

19 **MS. BOBADILLA:** Yes, Your Honor. We will submit
20 that.

21 **THE COURT:** We will reconvene at 1:00.

22 **(NOON RECESS FROM 12:05 P.M. UNTIL 1:04 P.M.)**

23 **THE COURT:** Ms. Bobadilla, were you able to find some
24 authority for this Court to entertain this motion?

25 **MS. BOBADILLA:** Your Honor, if I may approach with a

1 copy of the case, sir. In the interim, from approximately
2 12:00 to this time, I made a scurried search in order to
3 determine additional authority. I reurge the fact, Your Honor,
4 and I thank you and appreciate the fact that you granted us the
5 opportunity to actually file a written response to the motion
6 to dismiss that Ms. Golden has filed. However, in the interim,
7 in regard to your order, we found the United States Court of
8 Appeals Fifth Circuit *Stewart versus Dunn* cited as 363 F.2d
9 591. In this discussion of the case -- and, Your Honor, I do
10 submit that I have had an opportunity to review it; however, I
11 certainly would wish a greater opportunity to review Ms.
12 Golden's arguments and respond to them in writing and also
13 submit before this Court on an issue of jurisdiction in a
14 response in writing. However, on page eight it indicates that
15 "The law is clear that pending a decision on the question of
16 jurisdiction, a District Court has the power to issue a
17 temporary restraining order in order to preserve existing
18 conditions," and string cites *United States versus United Mine*
19 *Workers of America* and other cases therein. I submit, Your
20 Honor, under this case, the cited cases and others, that this
21 Court does have the power, while it entertains whether or not
22 it has jurisdiction over this complaint for injunctive relief
23 and the subsequent motion for injunctive relief, to issue a
24 temporary restraining order basically allowing for the existing
25 conditions as is, i.e., that Mr. Leggett not have disseminated

1 this tape to the public, or the substance of this litigation,
2 or anticipated litigation.

3 Thus, I respectfully, number one, Your Honor, move and
4 reurge your earlier allowing us to file a response, a written
5 response to the motion to dismiss, and also, citing this case,
6 indicate that you have the ability, and we would request that
7 you issue a temporary restraining order in order to preserve
8 the existing conditions. At this point my client is faced with
9 a threat and ultimatum. And I don't mean to overstretch the
10 definitions, in order not to be inciteful, but it is facing,
11 one, a \$15 million demand or dissemination to the media, or a
12 \$177 million demand if it does not resolve this claim. Thus,
13 based on Ms. Golden and her client's threats and otherwise, and
14 the cases, and what we have submitted to you in argument,
15 affidavits and otherwise, we submit that we respectfully should
16 be granted at least a temporary restraining order, allowed to
17 properly brief the motion to dismiss and oppose same, and/or
18 make any procedural corrections to our initial filing. Thank
19 you, Your Honor.

20 **THE COURT:** Ms. Golden, do you wish to respond?

21 **MS. GOLDEN:** Yes, sir. Again, Your Honor, I take
22 exception to the characterization of threats. Again, what I
23 surmise, I submitted demand letters, the parties engaged in
24 settlement negotiations, I have spoken with counsel opposite
25 several times trying to resolve this case, and not once does

1 she tell me that she or her client felt threatened in any way.
2 My first time hearing about any type of threat was when they
3 filed this application for a preliminary injunction. The
4 conversations that we have had with opposing counsel have been
5 amicable. They have been cordial. They have stated, *let's see*
6 *what we can do to try to resolve the claim*. So this is simply
7 an attempt to settle a justiciable claim, and they want to make
8 it seem like it is more than what it really is, but it is not.
9 I take offense to counsel opposite coming in here on the record
10 trying to characterize my client and me in a manner that is
11 disparaging. Again, he has a right to go, a constitutional
12 right to go to the media. That is his First Amendment right.
13 He has a right to try to settle a claim before proceeding to
14 Federal Court. Now that we see that they are not interesting
15 in settling, then he is going to exercise his right to go to
16 the EEOC and exhaust his administrative remedies.

17 Now, I just received this case, Your Honor, and just a
18 cursory review of it, I want to point out a couple of things to
19 Your Honor. In this case, this case is not like the case at
20 bar at all. On page three in the second column, second
21 paragraph, where it begins with "The complex and confused
22 events", it says that the party filed a complaint, and the
23 issue, we have a diversity jurisdictional issue in this case.
24 This case involved *Hyde Construction Company* in the Mississippi
25 District Court against *Koehring Company*, which is a nonresident

1 corporation. That would invoke diversity jurisdiction. So the
2 Court in this case had diversity jurisdiction to determine and
3 discuss the contractual issues involved in this case. There is
4 no diversity jurisdiction issue in the case at bar. In the
5 case at bar, my client is a Mississippi resident, and Butch
6 Oustalet Incorporation is a Mississippi corporation. So
7 diversity jurisdiction is not here.

8 The reason why the judge could issue a temporary
9 restraining order in this case is because the underlying -- he
10 had an underlying jurisdictional basis, and that was the
11 jurisdictional -- diversity jurisdiction.

12 Secondly, now the plaintiffs, when they served my client,
13 they served upon him a complaint for an injunction. They were
14 seeking a permanent injunction. They were not seeking an
15 application for temporary restraining order. Under Rule 65
16 there are certain requirements one must take if they are
17 seeking a temporary restraining order. They "must have
18 specific facts in an affidavit or verified complaint clearly
19 showing that immediate and irreparable injury, loss, or damage
20 will result to the movant before the adverse party can be heard
21 in opposition, and the movant's attorney certifies in writing
22 any efforts made to give notice and the reason why it should
23 not be required." Opposing counsel didn't do this. They want
24 you now to issue a temporary restraining order, but she did not
25 sign a verified pleading, she did not submit an affidavit to

1 this Court as to why the Court should -- she didn't articulate
2 with specificity in a sworn affidavit the immediate and
3 irreparable harm, and because of that, then this Court -- it
4 goes back to the original issue this morning. If this Court
5 doesn't have federal question, or if it doesn't have -- if this
6 Court doesn't have diversity jurisdiction, then it cannot issue
7 any orders over Mr. Leggett. The Court does not have the power
8 to issue an order over Mr. Leggett if a federal violation such
9 as what we mentioned, if it doesn't exist, and it is not in
10 these pleadings. The pleadings, again, are fatally flawed. I
11 would consider them DOA, dead on arrival.

12 **MS. BOBADILLA:** Your Honor, I apologize for the
13 intrusion. We were here in order to determine whether or not
14 there was a case that I could submit to you. This is argument
15 that I believe that we have heard this morning, and I believe
16 that I should be, again, allowed to respond to her in writing
17 within the ten days allowed. This particular case shows that
18 this Honorable Court has the power to issue a restraining order
19 pending the review of its jurisdiction. Now, I don't want to
20 belabor the Court, but what she is basically doing is arguing
21 this all over again, without allowing me time to respond in
22 writing for that, Your Honor.

23 **THE COURT:** You may proceed.

24 **MS. GOLDEN:** A temporary restraining order is only
25 good for ten days. So to restrain the defendant at all, we

1 submit that the Court doesn't have the jurisdiction to restrain
2 the defendant for one day, let alone ten days. Again, this
3 underlying case, you have the complaint that was filed, and you
4 have diversity jurisdiction. They haven't filed a complaint.
5 At best what you can call what they filed is an application for
6 an injunction. Where is the federal question? Where is the
7 complaint? There is no complaint. They have called it a
8 complaint, but it is not a complaint. It is an application for
9 permanent injunction.

10 So based upon that, Your Honor, their pleadings are
11 fatally flawed, and we pointed that out this morning. And the
12 Court does not have jurisdiction, and this case does not give
13 this Court jurisdiction over Mr. Leggett because the facts in
14 this case are totally different. There is no diversity
15 jurisdiction here, and if it was, then it would be different,
16 but we don't have a diversity jurisdiction argument in this
17 case today. And I am not trying to tell them how to practice
18 law, but we are in the wrong court. Thank you.

19 **THE COURT:** Thank you, Ms. Golden. Anything else on
20 behalf of the plaintiff?

21 **MS. BOBADILLA:** Your Honor, again, at this point we
22 believe that the motion to dismiss, as earlier ruled on by this
23 Honor, we should be allowed to specifically brief and respond
24 to, within the procedure, the written responses to this motion
25 to dismiss. To the extent that we believe that this Court does

1 have the power to issue a temporary restraining order while it
2 considers its jurisdiction, we submit the case before you. I
3 appreciate that it is a jurisdictional -- diversity
4 jurisdictional issue; however, the actual ruling held within
5 this indicates that the Court has that power. It is not
6 caveated by "it has that power within diversity jurisdiction."
7 It merely says that the Court has that power to do that and to
8 issue a temporary restraining order. Thus, I respectfully
9 request that you allow, as you this morning indicated that we
10 could file a written response within the procedural guidelines
11 to this motion to dismiss, and that a temporary restraining
12 order be issued during the time that you are considering your
13 jurisdiction.

14 I beg to differ. We in fact went ahead and submitted
15 affidavits, sworn affidavits by our clients, which this Court
16 accepted into the record. They are sworn affidavits. To the
17 extent that any bond or otherwise needs to be issued, again,
18 that can be done within today's time frame or within the
19 procedural requirements maintained by the request for the
20 temporary restraining order.

21 **MS. GOLDEN:** Shortly, Your Honor, if I may.

22 **THE COURT:** Um-hm.

23 **MS. GOLDEN:** There are strict compliances to Rule 65,
24 and to enjoin my client at all, they have to strictly comply
25 with the Federal Rules of Civil Procedure 65. They haven't

1 done that, Your Honor. They haven't even met the basic
2 threshold, and forcing us to come in here today on a short
3 notice, and they have not submitted any facts or any
4 affidavits. It is not just affidavits from others. It is
5 incumbent upon the attorney that is filing it to file an
6 affidavit, and she failed to do that.

7 And then, again, I believe the basic civil procedure
8 principle is that in order for a judge to issue any order over
9 anyone, whether restricting, denying, or forcing them to go
10 forward, the Court must have and decide jurisdiction before it
11 goes into the merits of any case. That is a basic premise,
12 whether it is in State Court or Federal Court. And we submit
13 that this Court does not have jurisdiction over Mr. Leggett,
14 based upon the pleadings that have been presented today. This
15 Court, this case that they have presented, does not change what
16 was stated this morning in court. The fact, Your Honor, that
17 that case that they have presented had -- the Court did have
18 jurisdiction, and once the Court says it has diversity
19 jurisdiction, then it can enter orders, whether it be temporary
20 or permanent. But in this case, there is no jurisdiction, and
21 we --

22 **THE COURT:** I think what the plaintiff is talking
23 about is that the Court has jurisdiction to consider whether it
24 has jurisdiction. And while I tend to agree with you, that it
25 is very questionable whether this Court has jurisdiction to

1 entertain the merits of this petition, that what the plaintiff
2 is asking for is some time within which to present briefing on
3 the jurisdictional question and for this Court to maintain the
4 status quo while they do that.

5 **MS. GOLDEN:** Your Honor, my client is also running
6 out of time. His time is running.

7 **THE COURT:** Running out of time to do what?

8 **MS. GOLDEN:** He wants to file his EEO --

9 **THE COURT:** That is not part of this -- they are not
10 asking that he be restrained from that. There is nothing that
11 would prevent Mr. Leggett from walking out of the courtroom
12 today, and I would never take action that would prevent Mr.
13 Leggett from filing a claim with the EEOC, if that is what he
14 wishes to do. The nature of this petition is to prevent Mr.
15 Leggett from disseminating what has been characterized at best
16 a very embarrassing videotape recording.

17 **MS. GOLDEN:** And if I may, Your Honor, it goes back
18 to my initial inquiry. How can the judge enter any order
19 restraining Mr. Leggett's ability to engage in his First
20 Amendment constitutional right when the Court has not reviewed
21 the tape? I find that -- I just find that -- that would be
22 something that I believe the Court should review in camera
23 before it even determines should it restrain Mr. Leggett.

24 **THE COURT:** Well, the purpose of restraining Mr.
25 Leggett temporarily would only be for this Court to consider

1 whether it has jurisdiction to ultimately enter an order that
2 enjoins him. I don't -- while I think that ultimately the
3 burden upon the plaintiff is going to be a difficult hurdle to
4 overcome, I don't see any harm in allowing them a short amount
5 of time within which to brief it. Besides, it may be good
6 practice in the event that this matter ends up before the Court
7 of Appeals. I don't want to snap to judgment.

8 I could be wrong on the jurisdictional question. I don't
9 think, quite frankly, Ms. Bobadilla, that I am, but I will at
10 least give you an opportunity, and I will refer to it as a very
11 brief opportunity, to convince me that this Court has
12 jurisdiction of this matter. I am very suspicious of that, and
13 I would be -- I will be educated if you are able to provide
14 case authority which would convince me that I need to proceed
15 to the merits.

16 And Ms. Golden, in answer to your invitation to review the
17 tape, it doesn't matter what is on that tape. If I do not have
18 jurisdiction of this case, then it doesn't really matter
19 whether the tape is good, bad, or ugly. It will not help me --
20 it will not help me in determining whether or not I have
21 jurisdiction on the merits.

22 **MS. GOLDEN:** Your Honor, I have spent 23 hours in
23 preparing, from last Thursday until today, I have spent 23
24 hours responding to their -- and researching their "complaint
25 for an injunction." I am also requesting to be reimbursed my

1 reasonable attorney's fees should the Court find that their
2 application has no merit and they don't have jurisdiction.

3 **MS. BOBADILLA:** Your Honor, I thank you for the
4 opportunity to brief and oppose Ms. Golden's motion. Ms.
5 Golden obviously has submitted that this claim, or at least a
6 resolution of this claim, is either worth \$15 million or
7 \$177 million if my client doesn't do what she requested to do.
8 So thus, I submit that if she believes their case, that to be
9 true, that she has signed on to her client to do her job,
10 whether it takes 25 hours, 26 hours, or otherwise. I
11 respectfully object to her request. Nonetheless, I thank you
12 for the opportunity to brief this, Your Honor, and respectfully
13 request that if you do not give me the ten days under the
14 statute, that at least five business days be given. Thank you,
15 sir.

16 **THE COURT:** Well, I can assure you that ten days, in
17 my judgment, is too long. I want to try to be fair, but,
18 unfortunately, the holidays approach, and while I am not
19 unsympathetic to the concept that everyone likes to take some
20 time off on Christmas Eve and Christmas and perhaps the day
21 after, I would like to have this matter resolved. I don't want
22 it hanging. And I don't think it is fair to the plaintiff, I
23 don't think it is fair to the defendant, for it to be hanging
24 out there any longer than it has to be.

25 Today is the 22nd, the afternoon of the 22nd. Can you

1 submit your brief by the morning of the 24th?

2 **MS. BOBADILLA:** Your Honor, since it was posed as a
3 question, I would respectfully request to be given at least
4 until December 29th to submit. I will certainly abide by this
5 Court's order, as I have today, however I respectfully request
6 at least to December 29th, which would be one week from today.

7 **MS. GOLDEN:** Your Honor, we oppose this. This is
8 their complaint.

9 **MS. BOBADILLA:** Your Honor, again, I would do what
10 this Court ordered.

11 **THE COURT:** One at a time, please. One at a time.

12 **MS. GOLDEN:** Your Honor, this is their complaint.
13 They are the ones who got out here first and said, we are going
14 to file this injunction. They need to have their ducks in a
15 row and have everything together when we come to court. They
16 are the ones who requested this court hearing today. We were
17 dragged here today to be in court on their complaint for an
18 injunction, and I respectfully submit to Your Honor, my client
19 wants to move on with the process, and this is continuously
20 going on and on, just like how she was doing in the settlement
21 negotiations.

22 **MS. BOBADILLA:** Your Honor, he can file his EEOC
23 complaint at any time. I don't believe that we are standing in
24 his way to actually do what he should do under the law. All I
25 am basically trying to do is to protect our client and do it

1 well. Again, Your Honor, whatever opportunity you afford me,
2 within reason, we will certainly, which I submit it will be, we
3 will certainly abide by that. I respectfully requested
4 additional time, but again, whatever your Court's order is.

5 **THE COURT:** Ms. Golden, I certainly don't want to cut
6 you off from any possible reply that you might have. Do you
7 wish to have a reply to their briefing on the jurisdictional
8 question? You have already raised it.

9 **MS. GOLDEN:** I think I have briefed it, Your Honor.
10 So I don't know what they -- it is hard for me to answer that
11 because I don't know what they are going to say in their
12 memorandum of authorities.

13 **THE COURT:** That is true, and I don't want to cut you
14 off if you want to reply, but you need to tell me -- if you
15 don't intend to reply, I will rule on what is before me. If
16 you do want some time to reply, then I want to try to be fair
17 with you, too.

18 **MS. GOLDEN:** I would like to have time to reply if I
19 so choose. Your Honor, I may not choose to. I don't know yet,
20 but I would like to have that opportunity in case --

21 **THE COURT:** How will I know if you choose not to?

22 **MS. GOLDEN:** Well, if the judge wants to give me a
23 day or so to respond, I don't object to that.

24 **THE COURT:** All right.

25 **MS. GOLDEN:** But I believe we are clear in our motion

1 to dismiss.

2 **THE COURT:** I think so.

3 **MS. GOLDEN:** And I really don't think it would be
4 necessary for me to file a reply to their response.

5 **THE COURT:** Well, once you receive their brief, if
6 you think that you don't need to file a reply, why don't you
7 say so in the form of a pleading, that you do not intend to
8 reply, and that way I can go ahead and rule rather quickly,
9 which is what I would like to do. I will give the plaintiff
10 until Friday, the 26th, within which to brief the
11 jurisdictional question.

12 **MS. BOBADILLA:** Thank you, Your Honor.

13 **MS. GOLDEN:** Your Honor, since you have given them
14 until Friday, the 26th, to submit a response, if I decide not
15 to submit a reply, would the Court be making a decision on the
16 26th or --

17 **THE COURT:** I will be making it as soon as all of the
18 pleadings are available. In this day of electronic filing,
19 that could be rather quickly.

20 **MS. GOLDEN:** Your Honor, I would waive our right
21 then, since the 26th is this Friday, I will waive our right to
22 file a reply to their response. I think our motion to dismiss
23 is sufficient.

24 **THE COURT:** Then when I say the 26th, I want the
25 plaintiff to have their response to the motion to dismiss for

1 lack of jurisdiction no later than noon on the 26th.

2 **MS. BOBADILLA:** Thank you, Your Honor. Are we free
3 to go, sir?

4 **THE COURT:** I am not sure. I am still thinking.

5 **MS. BOBADILLA:** Your Honor, I thank you for the
6 opportunity to respond in writing until December the 26th at
7 noon.

8 **THE COURT:** I know it puts a burden on the plaintiff
9 and the defendant as well, but this does not need to be
10 festering any longer than it has to.

11 **MS. BOBADILLA:** And Your Honor, I do submit that I
12 will not unnecessarily delay. I will certainly review this as
13 quickly as possible. My request for additional time was,
14 frankly, to make sure I did the appropriate job that I needed
15 to do.

16 **THE COURT:** Sure.

17 **MS. GOLDEN:** Your Honor, if I may, are we continuing
18 this hearing until the 26th? Because I want to make sure -- I
19 want to understand what the order is going to read, because
20 they were requesting a temporary restraining order, and which
21 we opposed that. I will submit to the Court, as an officer of
22 the Court, we will not go to the media between now and the time
23 we get the Court's order on the -- since we have been --

24 **THE COURT:** You would be restrained from doing so.

25 **MS. GOLDEN:** But my question is, is the order couched

1 in the form of a restraining order, or is the order just for a
2 continuance?

3 **THE COURT:** No. What I am doing is, I am giving the
4 plaintiff an opportunity to respond to your motion to dismiss
5 for lack of jurisdiction. In the interim, the Court will be
6 considering whether it -- it will have jurisdiction to consider
7 whether it has jurisdiction. I know that is a funny way to say
8 that, but the cases follow that line. And once I determine
9 whether or not I have jurisdiction, well, then I will rule one
10 way or the other. In the interim, then, you are restrained
11 from disseminating this tape recording or -- is it a video
12 recording or a --

13 **MS. GOLDEN:** Video.

14 **THE COURT:** You are restrained from disseminating the
15 video recording until the Court has had an opportunity to
16 consider whether it has jurisdiction over the complaint at all.

17 **MS. GOLDEN:** Okay. Thank you.

18 **THE COURT:** And again, Ms. Golden, I have not made up
19 my mind, and I shouldn't, but I tend to think that it is
20 unlikely that the Court has jurisdiction over this application,
21 but with all deference to the plaintiff, as an officer of the
22 Court Ms. Bobadilla wants to represent her client and wants to
23 be sure that she does it well, and I want to give her that
24 opportunity.

25 Of course, the Court now is in an awful position to be in.

1 There are two intertwining issues here that make this extremely
2 difficult. The underlying issue, of course, is whether or not
3 the defendant here should be permitted to present to the media,
4 or to any other person, for that matter, a video recording
5 which may be embarrassing to the plaintiff. There is, however,
6 an underlying issue that is -- that weighs on the Court that is
7 very disturbing to the Court and one which generates some
8 obligation on the part of the Court to do something. I have
9 reviewed the pleadings, and it is clear from the pleadings that
10 the plaintiff has made some allegations that border on criminal
11 conduct, or at the very least border on unethical conduct on
12 the part of counsel for the defendant. I have also reviewed
13 the attachments to the petition, and it is apparent from those
14 attachments that, again, there is at least some support for the
15 allegation that there has been some wrongdoing on the part of
16 the defendant, or perhaps even on counsel for the defendant.
17 Ms. Golden, in your letters that you have written to the
18 plaintiff, which you have characterized as an effort to settle
19 an underlying claim, unfortunately you condition or you make a
20 condition to the payment of this 15 million-dollar sum the
21 revelation of evidence to the media or to other individuals.
22 Of course, I, or the Court for that matter, have no difficulty
23 with a plaintiff that has a putative claim making an effort to
24 settle that claim, and to settle it for money, and that is, of
25 course, to settle the underlying claim, but unfortunately,

1 perhaps the language in your letters has gone farther than just
2 settling the underlying claim. You have made a threat to
3 reveal this embarrassing video recording to the media as part
4 of what you have characterized as a settlement. That may --
5 and I have no opinion as to how it would come out, but that may
6 constitute some violation which generates in me an obligation
7 to report that to the appropriate authority, and I intend to do
8 so.

9 I express no opinion as to Mr. Leggett's underlying
10 putative claim for violation of his rights. He has the right
11 to bring that claim, and he certainly has a right to have it
12 adjudicated. I express no opinion as to the admissibility of
13 this video recording, which may tend to support his underlying
14 claim, but what may be objectionable here is the threat that in
15 the absence of paying money, that the tape would be revealed to
16 the media, and that may have crossed the line. I leave that
17 ultimate determination, however, to the appropriate executive
18 authorities. I thought, in fairness to you and in fairness to
19 your client, you should know that I have no alternative but to
20 take that action. All right. Anything else on behalf of the
21 plaintiff?

22 **MS. BOBADILLA:** No, Your Honor. Thank you.

23 **THE COURT:** Anything else on behalf of the defendant?

24 **MS. GOLDEN:** No, Your Honor.

25 **THE COURT:** Thank you. You are excused.

(HEARING CONCLUDED.)

CERTIFICATE OF COURT REPORTER

I, Teri B. Norton, RMR, FCRR, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

S/ TERI B. NORTON, RMR, FCRR
OFFICIAL COURT REPORTER